

USAWC STRATEGY RESEARCH PROJECT

PREEMPTION: MAKING AMERICA MORE SECURE?

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ABSTRACT

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One of the more controversial aspects of the G.W. Bush administration's National Security Strategy (NSS) of September 2002, is explicit in Section V, on page 15 in support of Preemptive War when it states "The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. ...To forestall or prevent such hostile acts (attacks against our military forces or civilian population) by our adversaries, the United States will, if necessary, act preemptively."

The NSS does point out that one of the key components of preemption legal scholars typically use to validate such action is the presence of imminent danger of attack. The NSS also clearly points out the difficulty in this area with regards to terrorist type threats. The risk of waiting for clearly hostile acts in this era of weapons of mass destruction could be catastrophic. It is therefore arguably necessary that preemption be an acceptable option in US policy. In fact, last year there were no less than five strategy research papers produced at the U.S. Army War College espousing the need and validity for preemptive war.

The Bush administration employed the doctrine of preemptive war in the conduct of Operation Iraqi Freedom with decidedly mixed results. Although the initial combat phase of the war has been successful and Saddam Hussein This effort has received criticism from the world community, including many of our allies, as well as a significant number of Americans. While it is too early to assess the long-term impact of this preemptive war, it can be argued that this particular effort has received far more criticism than other similar efforts in the past.

As mentioned previously, there appear to be valid reasons to retain the option for preemptive war as a policy option. The question is whether publishing this strategy and invoking it in situations like Iraq enhance United States Security. The focus of this paper is to attempt to identify the advantages and disadvantages of publishing the preemptive strategy option. To accomplish this task, the method employed will be to review the recent history of

preemptive war, related International Law and conventions, and the perspectives of protagonists and international observers. Through study of the events and commentary the goal will be to provide a broad picture of not only the primary effect of such policy but some of the secondary effects as well.

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PREEMPTION: MAKING AMERICA MORE SECURE?

INTRODUCTION

On March 20, 2003, the United States launched an invasion of Iraq to remove Saddam Hussein from power. This action, taken without the endorsement of the United Nations (UN) Security Council, was justified in large part on the strategy espoused in the September 2002 National Security Strategy of the United States of America.

The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.¹

The United States maintained that Saddam Hussein had large stockpiles of weapons of mass destruction (WMD) and was planning to use them against the United States or at least transfer these weapons into the hands of a terrorist organization that would. As stated in the introduction to the National Security Strategy, "History will judge harshly those who saw this coming danger but failed to act."² When the UN failed to act at the pace perceived necessary by the United States, a "coalition of the willing"³ was formed to take action.

The foundation of preemptive force in the National Security Strategy is to provide better security to the citizens and properties of the United States. This strategy evolved quite naturally from the events of September 11, 2001, when terrorists seized four airliners in attacks on the World Trade Center in New York and on the Pentagon in Virginia. It was felt that to wait until terrorists initiated action—often the first sign of an attack—was an unacceptable strategy. Given the support of Afghanistan's Taliban government for the Al Qaeda terrorist network responsible for the attack, the National Security Strategy also made it clear that the United States must be prepared to stop rogue states such as Iraq before they could pose a danger to the United States.⁴

While the initial military action of Operation Iraqi Freedom has been deemed a quick success, the long-term implication for America's security remains uncertain. This is largely due to the many complex factors that impact the security of the United States in today's world. It is too early to say how this endeavor will turn out, but it appears that Iraq's WMD capabilities were overstated and did not pose an imminent danger. However, it isn't too early to question the impact of the conflict and the associated policy on United States security. Has the incorporation

of preemption into the National Security Strategy of the United States made this country more secure? Further, what has been the impact on United States security with the execution of this strategy in Iraq? The evidence to date suggests that both the policy and the manner of its execution have made the United States less secure.

PREEMPTION DEFINED

One of the most significant issues is what the National Security Strategy declaration on preemptive action implies; this is further confused by the manner in which preemptive action was used in Iraq. The discussion in the National Security Strategy focuses on the historic nature of preemption when one country reacts to the imminent use of arms by another. However, the action taken in Iraq can more likely be deemed a preventative action. These two basic forms of anticipatory self-defense—preemption and prevention—can be further subdivided by their severity as in an attack or war. Any of these actions need not necessarily employ the military although that is certainly the area of most concern and where discussion has focused. Historically, preemptive wars have had a long-standing legitimacy that preventative wars have not.⁵ To better understand the position of the United States on this issue, as well as the rest of the world community, it is important to look into recent history.

Perhaps the clearest examples of the difference between preemption and prevention in the modern era have been demonstrated by Israel. In 1967, tensions between Israel and its Arab neighbors began heating up when increased Syrian aircraft shelling of Israeli settlements resulted in an Israeli counterstrike during which six Syrian MiGs were shot down. The situation deteriorated in part due to the recent alliance between Syria and Egypt. Egypt initiated a military buildup of forces along the UN-patrolled border with Israel. Egypt then demanded the withdrawal of UN forces from the border area, and soon after announced a blockade on Israeli shipping at the Strait of Tiran. Israel, which had previously stressed how such an action would be perceived, saw it as being tantamount to a declaration of war. Jordan and Iraq rapidly joined Syria in its military alliance with Egypt. Less than a week later on, June 5, 1967, Israeli aircraft launched a preemptive air strike against the amassed Egyptian Air Force, virtually eliminating them. Retaliation by the other alliance members broadened the action. Israel ultimately pushed forward a ground assault that captured significant parts of Egypt, Jordan and Syria.⁶ Ignoring the expected Cold War response, condemnation of this action in the world community was for the most part limited to the failure of Israel to withdraw from the captured territory, and not for the initiation of the war that was considered a justified preemption.

In 1981, Israel launched an air strike at the Osirak Nuclear facility in Iraq, generally believed to be a key component of Iraq's effort to develop nuclear weapons. Although normal relations between Iraq and Israel did not exist, and in spite of the fact that few if any nations in the world were in a hurry to see Iraq successfully develop a nuclear weapons capability, the Israeli argument that they were destroying the facility as preemptive self-defense before it could produce weapons that would be used on Israel was not accepted by the world community. Legal scholars have long held that an attack by force is not permissible if the danger is merely assumed, but only permitted when the danger is immediate and certain and there is no other way it can be averted.⁷ The fact that the danger was not imminent made this a preventative attack that was summarily condemned by the world community, including the United States.⁸

THE AMERICAN PERSPECTIVE

Historians often base the United States perspective on preemptive war on the *Caroline* Incident of 1837 and the subsequent acceptance by the United States in formal documents in 1843 between the United States and Britain that the action was lawful. The *Caroline* was a steam gunboat that was attacked and burned by British troops in United States territory, killing a few Americans in the process, because it was preparing to transport arms and men in support of the Canadian Rebellion of 1837. However, a couple of points are worth considering when using this action as a basis for legal precedence. While the *Caroline* was owned by an American and located in United States territory, it had been formally loaned to the services of a Canadian who had entered into a state of rebellion with Canada and Great Britain and who was using American territory as a staging ground. He had even gone so far as to appoint a new provisional government.⁹ The British initially apologized for the incident but subsequent correspondence between the British and American governments basically agreed that such action was legal provided that the "necessity of self-defense is instant, overwhelming, and leaving no choice of means and no moment of deliberation."¹⁰ Whether or not these criteria met the *Caroline* incident is unclear. It seems that the ratification of this action implies the United States supported the intervention within a sovereign domain by another to take action against non-state forces; other more modern examples don't seem so clear.

In May 1977, Rhodesian military forces crossed the border into Mozambique to attack guerilla forces that were trying to overthrow the Rhodesian government of Ian Smith. The UN Security Council, including the United States, immediately condemned the action and unanimously demanded an immediate withdrawal back to Rhodesia.¹¹ Similarly, when South

African troops entered Botswana and killed a number of ANC guerillas the Security Council condemned the cross-border raid. Although both South Africa and Rhodesia claimed these actions were in self-defense, the claims were rejected. Some might argue that prevailing world sentiment opposed to the white minority governments in both of these nations may have influenced the vote. However, in 1982 Israeli forces invaded Lebanon to halt cross-border terrorist operations primarily related to shelling of Northern Israeli settlements. Again, the UN Security Council unanimously condemned the action and demanded an immediate withdrawal of Israeli forces from Lebanon.¹²

THE RULES OF WAR

On the surface it would appear that the *Caroline* Incident, and the cross-border events into Mozambique, Botswana and Lebanon were similar in nature, yet the first is cited as legal precedent for preemptive action while the others were condemned as aggression. To help understand some of the subtle differences it is necessary to take a brief look at the evolving nature of human warfare. The concept of war adhering to certain rules is often cited as starting with St. Augustine of Hippo, a fourth century Roman, and his writings of Just War. The two major subject areas within this moral context of Just War are “jus ad bellum,” or the right to go to war, and “jus in bello,” the right behavior in war; the latter became more developed over the centuries.¹³ For the purposes of this discussion, jus ad bellum is a portion of the Just War theory that is most relevant to preemptive action. In 1986, the United States’ Methodist Council of Bishops published a standard listing of Just War criteria reducing the essential elements of the Just War framework by two. Their list identified five considerations for analyzing the initiation of conflict to determine its moral justification:

Just Cause. The decision for war must vindicate justice in response to some serious evil, such as aggressive attack.

Just Intent. The ends sought in a decision for war must include the restoration of peace with justice and must not seek self-aggrandizement or the total devastation of another nation.

Last Resort. This tradition implies a moral presumption against going to war, but is prepared to make exceptions. Every possibility of a conflict’s peaceful settlement must be tried before war is begun.

Legitimate Authority. A decision for war may be made and declared only by a properly constituted governmental authority.

Reasonable Hope of Success. A decision for war must be based on a prudent expectation that the ends sought can be achieved. It is hardly an act of justice to plunge one's people into the suffering sacrifice of a suicidal conflict.¹⁴

Looking at these five conditions it can be argued that perhaps each of the cases of cross-border action may have met slightly different criteria. Particularly, the Security Council would argue that the last three actions taken prior to their being the last resort. One could contend that legitimate state authority existed in the invaded nations that could have been invoked to take action. One concept that seems to run through the discussions of Just War theory is a suggestion that there is a hierarchy of escalation before the use of force becomes involved.¹⁵

Another important aspect to note regarding Just War theory is the gradual shift over time from the writings of lawyers and clergy to the norms and customs of the interactions between nations, as people eventually conclude which behaviors are acceptable and which are not. This has resulted on an increasing emphasis on the concepts of Last Resort and Proportionality and in particular jus in bello.¹⁶ These norms and customs have ultimately been embodied in a number of documents, notably The Hague and Geneva Conventions for jus in bello and the UN Charter for jus ad bellum. In essence, the goal of the UN is captured at the beginning of the Preamble to the Charter:

We the Peoples of the United Nations Determined to save succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to man...¹⁷

It is obvious that the principle purpose of the UN was to create a mechanism to eliminate war. This is evidenced clearly in Article 2, paragraph 4, which states:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state...¹⁸

However, the framers of this document also recognized that there would be circumstances where armed force might be required. Article 51 states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations...¹⁹

It is for this reason the three preemptive actions, since the establishment of the UN Charter, attempted to use self-defense as the justification for their attacks. While the UN Charter does not expressly prohibit preemptive actions, it is clear that it must be a self-defense action under threat of imminent attack. Consequently, preventative military actions or interventions are typically unjustifiable without Security Council endorsement. "The principle of the Non-Use of Force, for example may thus be regarded as a principle of customary international law."²⁰ The Security Council and the General Assembly have repeatedly expressed this in various resolutions.

This is not to say there isn't plenty of legal debate on the subject. There are generally two schools of thought regarding the meaning of the words within the charter in two areas. One involves the definition of aggression and the other its relationship to armed conflict. Wars and possible acts of aggression are recognized as one of the few breaches of international law to be considered international crimes. This gives rise to universal jurisdiction over individuals responsible for their breach.²¹ As a result, nations do not want to be found to be committing acts of aggression. This has led to considerable discussion and debate over the definition of aggression. In 1952, the UN General Assembly established a special committee to clarify the definition. The Soviet Union advocated what has become known as the Priority Principle. This simple definition provides that the first use of armed force by a state will be considered aggression unless the Security Council, taking into account other relevant factors including aggressive intent, but ignoring political, economic or military justifications, decides otherwise.²²

This definition had wide support within the UN but was persistently opposed by many western nations, notably the United States, the United Kingdom and France. In fact, the United States long resisted UN attempts to define aggression at all, arguing that it was a secondary consideration that could be better be addressed on a per case basis by the Security Council.²³ To complicate things further, the United States and others have disagreed over equating the definition of armed attack—as stated in Article 51—with aggression. The United States has traditionally opposed this linkage. However, a look at the French version of the UN Charter translates armed attack as "agression armee." It should be noted that acceptance of the priority principle in its undiluted form would clearly outlaw preventative war.²⁴

Another key debate in legal discussions is the fact that regardless of what is said on paper, reality is a different situation. As mentioned earlier, the development of international law in recent times has been largely based on norms and customs. However, history is replete with examples of interventions and other armed actions since the establishment of the UN Charter. The United States intervened in Guatemala (1954), the Dominican Republic (1965), Grenada

(1983), and Panama (1989), while the Soviet Union used similar arguments to go into Hungary (1956), Czechoslovakia (1968), and Afghanistan (1979).²⁵ The legal argument claims it is the normative behavior of international relations, and is customary and legal behavior, not what is written into the UN Charter. Some even argue the UN Charter framework is dead.²⁶

The International Court of Justice in the Nicaragua case rejected this argument as stated:

The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolute rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule. If a State acts in a way *prima facie* incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than weaken the rule.²⁷

The Court did not, to the possible dismay of the dissenting American judge, clarify the right to preemption. However, it is important to note the final part of the Court's statement. In all of the interventions described above, the arguments for the intervention were either extensions of the self-defense claim or invitations by legitimate authorities for intervention. One needs to ask: why bother with attempts to justify the action? Many adhere to the philosophy that international relations are relations of power, not law. Power prevails and law legitimizes what prevails.²⁸ That would probably be an accurate assessment if power were absolute and of one mind. However, power isn't absolute, and democracies typically have many viewpoints on any issue.

NATIONAL POWER AND PREEMPTION

There can be little debate that the United States military is the most powerful on the planet today. However, United States power is manifested in many elements to include economic power, diplomatic power, and informational power in addition to military power. However, just as national power can only be measured relative to others, to clearly divide national power into these individual elements is an artificial construct to simplify understanding and discussion. These elements are tightly intertwined, and a consequence to one cannot help but affect the others. As David Jablonsky, the noted author and national security expert, said, "Together they constitute the resources for the attainment of national objectives and goals."²⁹

What has made the United States the leader of the free world has been preeminence in all of these elements. Since one of the primary goals of national government is national security, all of these elements should be employed toward this end.

As mentioned earlier, preemption has long been a tool in the United States' arsenal. However, there are two good reasons for formally incorporating preemption into the National Security Strategy. Regardless of the United States military's strength, unless a credible threat for use exists it is of little value short of defense in an actual attack. The incorporation of preemption indicates a greater likelihood for the use of military force, thereby increasing the credibility of the threat. Secondly, publishing this strategy first, allows the political dialog necessary in a democracy facilitating the migration of the concept into the political psyche of Americans who might otherwise be shocked should preemptive military action be employed. The question is whether, based on its questionable legal standing in much of the world, its negative impact on other elements of power exceeded the benefit its incorporation may have provided. As Henry Kissinger stated, "It cannot be in either the American national interest or the world's interest to develop principles that grant every nation an unfettered right of preemption against its own definition of threats to its security."³⁰ Former National Security Advisor Brent Scowcroft summed it up best when he said:

It isn't clear to me what advantage there is in declaring it publicly. It has been common knowledge that under some circumstances the United States would act preemptively. As a declarative policy it tends to leave the door open to others who want to claim the same right. By making it public we tend to add to the World's perception that we are arrogant and unilateral.³¹

After the attacks on September 11, world opinion was strongly supportive of the United States and its efforts to track down those responsible. Within a year, much of this support eroded due to the United States' tendency to act unilaterally, as much for expediency than because a need truly existed. World public opinion of the United States has declined precipitously since its recent highpoint. By the time of the invasion of Iraq even the British public holding a favorable view of the United States had declined from 75% to 48%. Only Poland had a more favorable opinion at 50%. Italy and France held only a 33% favorable rating. Germany and Russia were down to 25% and only 1 in 10 had a favorable view of the United States in Spain and Turkey.³²

No one expects the United States to run its policy using public opinion polls. It is important to note, however, that all of these countries are democracies, and as such the people wield some degree of power. Early evidence came during the 2002 elections in both Germany

and South Korea. In both countries the results turned on opposition to United States policy placing governments less supportive of the United States in power.³³ Through much of the last 50 years the United States has used a strategy of engagement and enlargement to address security issues that included ethnic conflicts, rogue states, proliferation of weapons of mass destruction, large scale environmental degradation, excessive population growth, organized forces of terrorism, international crime, and drug trafficking.³⁴

This collective approach to global security is still essential to national security as evidenced by George Tenet's speech at Georgetown University on February 5, 2004, when he discussed efforts to hamper the development of weapons of mass destruction.³⁵ President Bush stated during the second presidential debate with Al Gore:

Our Nation stands alone right now in the world in terms of power. And that's why we've got to be humble...If we are an arrogant nation, they'll view us that way, but if we're a humble nation, they'll respect us.³⁶

Resentment, and not respect, may characterize how most other countries have reacted to policies like preemption. Preemption by its very nature implies unilateralism. The United States will go it alone or lead a "coalition of the willing." When viewed with actions taken by the United States in failure to ratify a number of recent international agreements to include the Law of the Seas Treaty, the Comprehensive Test Ban Treaty, the Kyoto Protocol, and the International Criminal Court, it appears to much of the world that the United States is indeed arrogant.

When discussing why the administration wouldn't pursue ratification of the Comprehensive Test Ban Treaty, President Bush stated that these kinds of international agreements constrained only the United States and law abiding nations, leaving rogue states to do as they chose.³⁷ This implies that international agreements that restrict dangerous behavior reduce national security because some nations would disregard international norms and law. Of course, in the absence of an agreement everyone is free to engage in risky activities. There is a similar problem with the preemption statement in the National Security Strategy. Either what is considered acceptable behavior for the United States is acceptable for all nations or the United States is perceived as arrogant in embracing practices that it will not permit of others.

This erosion of the often-called "soft" power of the United States in the diplomatic arena is not without other risks. The cost of Iraqi occupation is over \$1 billion per week and another \$20 billion will be needed for reconstruction in 2004 alone. By comparison, the entire United States foreign aid budget in 2002 was \$10 billion.³⁸ In spite of the roll call of nations included in the "coalition of the willing" few sent any significant troop numbers into Iraq and fewer still are

paying the cost of Iraqi occupation or reconstruction. Coupled with the downturn in the United States economy and other fiscal policies, the United States budget deficit for FY04 is expected to be near \$500 billion. It is expected to be worse in FY05 with a submitted projection of a \$526 billion shortfall. This exceeds the entire DoD budget by over \$100 billion.³⁹ These outlays reduce the economic power available to the United States to address unforeseen needs both at home and abroad, potentially weakening national security.

APPLYING THE RIGHT POWER

One of the greatest concerns of the unilateral preemption strategy is its over-reliance on a military solution to address national security. It would appear at this point that Saddam Hussein was sufficiently crippled by economic and diplomatic sanctions that he was unable to obtain the WMD he sought, even though it's known that not everyone complied with the sanctions. Similarly, when the non government organization (NGO) Global Watch closed the Thai-Cambodian border to the lumber trade to halt exploitation of rare hardwoods in Cambodia the loss of income to the Khmer-Rouge was severe. The resultant economic instability greatly aided in toppling this repressive regime.⁴⁰ The United States has used its economic power preemptively in the past to reduce or eliminate potential threats by establishing self-imposed boycotts. Perhaps the best example is Libya. Libya, long suffering under an economic boycott by the United States and its allies, in early 2000 began to take positive steps towards reconciliation with the world community. It agreed to turn over the suspects responsible for the Pan Am Flight 103 bombing in exchange for the lifting of UN sanctions. Upon conviction Libya compensated the victims' families. It recently decided to scrap any efforts to develop WMD in a further effort to restore normal relations with the United States.

This combination of economic and diplomatic power was able to preempt Libya's development of WMD. Just as the United States has attempted over the years to use foreign aid to influence the direction of foreign governments, control of economic resources can indeed influence the direction of foreign governments. In fact, the revenues from trade far exceed foreign aid and potentially could offer a great deal of influence. Sometimes just the threat of diplomatic and economic sanctions can prevent a crisis. When the Baltic States received independence from the former Soviet Union, they wanted to deny citizenship to the many Russians that had been encouraged to migrate there a generation earlier. The United States used diplomatic and economic pressure to ensure these people were treated as citizens. This avoided any potential military intervention by Russia and went a long way to smoothing over

difficulties similar to those that later broke out in the Balkans.⁴¹ The use of economic power and diplomatic power may be slower and somewhat harder to gauge but they can be effective and less costly than military options both in financial and human terms.

Perhaps the greatest impact of the preemption in Iraq has been in the informational arena. Since its inception, the United States has represented to the world the ideals of personal liberty and democracy. However, encouraging democracy and imposing it are two different things. John Quincy Adams addressed the issue on July 4, 1821, as follows:

America applauds those who fight for liberty and independence he argued. But she goes not abroad, in search of monsters to destroy. She is the well wisher to the freedom and independence of all and vindictory only of her own... To do otherwise would repudiate the moral claim from liberty to force dictatress of the world.⁴²

To some degree, this message recalls the earlier era of American isolationism. However, when President Bush in the State of the Union Speech of 2003, stated "Americans are a free people who know that freedom is the right of every person and the future of every nation," he implied a widely shared American viewpoint that if other nations were given the opportunity they would choose the American ideals of democracy and free enterprise.⁴³ Unfortunately, for many in the Middle East, western civilization is seen more as a threat than a benefit. It has largely been because of the United States' support for Israel and repressive Arab regimes that Al Qaeda was encouraged to launch its war against Americans. Further, with the exception of Kuwait, the action by the United States to invade Iraq was widely condemned throughout the Arab Middle East, in spite of quiet support from governments of some of our regional friends.⁴⁴ The media in the Arab world only exacerbates the continuing deterioration of the United State's image.⁴⁵ This is a powerful recruiting tool for Al Qaeda and other terrorist organizations opposed to the United States. Evidence already suggests that these groups have entered Iraq to disrupt United State's efforts there. In essence, the invasion has created more anti-American terrorists.

A COLLECTIVE OPTION

Regardless of all these negative impacts of this preemptive action, many will argue that Saddam Hussein needed to be removed if simply because he was an oppressive tyrant. While economic sanctions may have precluded him from being a military threat, it also negatively impacted the Iraqi people, while he continued to build large palaces and live a life of grandeur.

They argue the United States could justify its preemptive intervention on humanitarian grounds. Unfortunately, it has generally been accepted that there is no just cause for waging war other than "injury received."⁴⁶ This is particularly true when the intervention is to remove an existing sovereign regime. When Vietnam finally intervened into Cambodia to remove Pol Pot, who had murdered over three million of his own people, the UN General Assembly condemned their action.⁴⁷ As with the United States invasion of Iraq, Vietnam's unilateral invasion into Cambodia made it difficult for the world to determine whether the action was humanitarian or self-serving. Only when the existing regime has not been directly targeted have humanitarian interventions received minimal condemnation.

As the situation in Afghanistan points out, however, a problem in one part of the world can affect everyone else. In recent years there has been considerable debate regarding human rights. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Warsaw Declaration, and the UN Charter are just a few examples of documents that question the claim of sovereignty and domestic jurisdiction to deny rights to its populace.⁴⁸ Non-democratic governments may or may not be serving their people. The two challenges this situation creates are how to intervene and how to ensure that intervention serves the common interests.⁴⁹ Regardless of intent, unilateral intervention is ill suited to meet these challenges. In fact, except as a collective right authorized by the Security Council, humanitarian intervention cannot be justified under the UN Charter.⁵⁰ Unfortunately, the delay it can take for UN action sometimes makes unilateral action necessary, but in these circumstances regime change should not be the goal.

The UN International Commission on Intervention and State Sovereignty has espoused the concept of "peoples sovereignty." The rulers of a state have a responsibility to their citizens. When the sovereign fails to exercise this responsibility adequately it should be transferred to the international community.⁵¹ The establishment of the Warsaw Declaration further established a valid basis for the intervention into the internal affairs of sovereign states. It provides a connection with the rights of people and the right of outside intervention to protect those rights.⁵² It would not be hard to make a case for Saddam's abuse of the Iraqi people. Historically, however, this action has been little used when a sovereign government still exists. But as the argument begins to shift from Iraq as an imminent threat to Saddam as a despot that needed removal, it would have been worth considering some of the other options available.

RECOMMENDATIONS

Throughout modern history the United States has been the leader of the free world. As a free nation we freely chose to sign the UN Charter, and the Senate, through its ratification, incorporated its provisions into the law of the United States. It must adhere to the rules that it seeks to impose on others.⁵³ Much of the world community views the use of the preemption option as of dubious legal standing in all but the clearest circumstances. To paraphrase the words of Teddy Roosevelt, the United States needs to walk softly in addition to carrying a big stick. Incorporating preemption into the National Security Strategy loudly announces a unilateral predisposition that even our allies resent. The issue is whether this pronouncement has made the United States more secure.

The incorporation of this option in the National Security Strategy may encourage others to claim the same right thereby making the world less secure. Its application in Iraq has implied that a preemptive action and a preventative action are the same. This has created the sense in much of the world community that the United States is an arrogant nation that sets itself to a different standard in ignoring the rule of international law. When one nation ignores a law with impunity, it can be argued that law itself has been diminished. At a minimum, the image of the violator suffers. As a result, the United States' diplomatic power has diminished. This in turn has resulted in less support for United States efforts both in Iraq and Afghanistan thereby creating an economic burden on the United States. The significant financial outlays reduce the economic power available to the United States to respond to unforeseen crises and potentially impact the nation's long-term economic vitality.

Perhaps worst of all, however, is the impact on informational power. In fighting the global war on terrorism that many characterize as a war between Islam and the West, the United States has taken a challenging path. The invasion of Iraq alone has provided Al Qaeda and other anti-US terrorist groups a potent recruiting tool. The United States is attempting to win the ideological war by establishing a vibrant economy and a somewhat western style democracy in the heart of the Middle East. This is a high-risk strategy. It will be a difficult, expensive undertaking. As National Security Advisor Condoleezza Rice once said, "...The United States military is not a civilian police force...It is not a political referee. And it is certainly not designed to build a civilian society."⁵⁴ Regardless of what the United States military is or isn't, the facts today require it to operate in all those realms. As Dr. Anthony Cordesman from the Center for Strategic and International Studies has noted, "The history of Nation Building is particularly discouraging where it has been attempted in a climate of violence."

The strategy of preemption into the National Security Strategy has always been touted as a response to the terrorist attack of 9/11. Its real impact though has been on the relationships between sovereign states. Al Qaeda has declared war on the United States. Any attack at any time on Al Qaeda or its non-state allies is not preemptive because a state of war exists. If a sovereign state is sheltering the terrorists and they have the means of taking action against them they should be given the opportunity to do so as was the Taliban in Afghanistan. If the government of a failed or failing state is unable or unwilling to take action, intervention is justifiable but again by attacking those at war with the United States is not preemption. The war against Islamic terrorism is a long-term endeavor that is not going to be won by the military alone. To win this war it will take a sustained effort requiring the cooperation of the world community and a strong economic and informational campaign to win the hearts and minds of succeeding generations. Espousing a strategy of preemption cripples these efforts, encourages an unsustainable military campaign, and provides nothing in return. Its removal from the National Security Strategy can only make the United States more secure.

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ENDNOTES

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² Ibid., 2.

³ Ibid., 3.

⁴ Ibid., 14.

⁵ Ivo H. Daalder and James M. Lindsay, *America Unbound: The Bush Revolution in Foreign Policy* (Washington D.C.:Brookings Institution Press, 2003), 127.

⁶ Onwar.com, "The Six Day War 1967," 16 December 2000; available from <http://www.onwar.com/aced/nation/ink/israel/f6day1967.htm> . Internet. Accessed 12 January 2004.

⁷ Onuma Yasuaki, *A Normative Approach to War* (New York: Oxford University Press, 1993), 87

⁸ Daalder and Lindsay, 127.

⁹ J. Ross Robertson. *Robertson,s Landmarks of Toronto*, Transcribed by Walter Lewis, available from <http://www.hhpl.on.ca/Greatlakes/Documents/Robert2/default.asp?ID=c006> . Internet; accessed 31 January 2004.

¹⁰ Anthony Clark Arend, "International Law and the Preemptive Use of Military Force", *Washington Quarterly* 26 no.2 (Spring 2003), 91

¹¹ Hilaire McCoubrey and Nigel D. White, *International Law and Armed Conflict* (Brookfield Vermont: Dartmouth Publishing, 1992), 109.

¹² ibid., 96

¹³ Harold H. Worrell Jr., *Preemptive Action-Setting the Left and Right Limits*, Strategy Research Project. (Carlisle Barracks: U.S. Army War College, 7 April 2003),10.

¹⁴ Ibid., 10

¹⁵ *ibid.*, 14

¹⁶ McCoubrey and White, 23.

¹⁷ United Nations Charter 24 October 1945, 1.

¹⁸ *Ibid.*, Chapter II, Article 2 paragraph 4

¹⁹ *ibid* Article 51

²⁰ McCoubrey and White, 32.

²¹ *Ibid.*, 39.

²² Yehuda Melzer, *Concepts for Just War*, (*The Netherlands: A.W. Sythoff International Publishing Co.1975*), 30.

²³ McCoubrey and White, 46.

²⁴ *Ibid.*,

²⁵ McCoubrey and White, 26.

²⁶ Anthony Clark Arend, "International Law and the Preemptive Use of Military Force," *Washington Quarterly*, 26, no. 2, (Spring 2003),103.

²⁷ McCoubrey and White, 27.

²⁸ George Soros, *The Bubble of American Supremacy* (New York: Public Affairs, 2004), 3.

²⁹ Jablonsky, David. National Power. US Army War College Guide to Strategy Chapter 8, edited by Joseph R. Cerami and James F. Holcomb Jr. February 2001

³⁰ Daalder and Lindsay, 126.

³¹ *Ibid.*

³² Soros, 23.

³³ Daalder and Lindsay, 193

³⁴ Worrell, 3.

³⁵ George Tenet, "Speech at Georgetown University," 5 February 2004; available at http://www.washingtonpost.com/wp-dyn/articles/A15366-2004Feb5_4.html . internet. Accessed 5 February 2004

³⁶ Joseph S.Nye, "Seven Tests: Between Concert and Unilateralism," in *The National Interest on International Law & Order*, edR. James Woolsey, (New Brunswick NJ: Transaction Publishers, 2003), 80.

³⁷ Daalder and Lindsay, 45.

³⁸ Soros, 63.

³⁹ Department of Defense, "Press Release FY 2005 Budget," available from <http://www.defenselink.mil/releases/2004/nr20040202-0301.html>. Internet. Accessed 6 February 2004

⁴⁰ Soros, 151.

⁴¹ Ibid., 109

⁴² Daalder and Lindsay, 4

⁴³ ibid., 125

⁴⁴ Pew Global Attitudes Project, *Views of a Changing World 2003*, available from <http://people-press.org/reports/display.php3?ReportID=185> internet, accessed 2 March 2004. 1

⁴⁵ Bradley Graham, "Rumsfeld Defends Preemption Doctrine", *Washington Post*, 8 February 2004, sec. A p. 21.

⁴⁶ Onuma Yasuaki, 78.

⁴⁷ Michael Howard, *The Laws of War* (New Haven, CT: Yale University Press, 1994), 200.

⁴⁸ ibid

⁴⁹ Soros, 100-101.

⁵⁰ Daalder and Lindsay, 119.

⁵¹ Soros, 102.

⁵² Ibid., 109.

⁵³ Ibid., 168.

⁵⁴ Daalder and Lindsay, 47.

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